

1 KING & SIEGEL LLP
JULIAN BURNS KING, Bar No. 298617
2 julian@kingsiegel.com
ELLIOTT J. SIEGEL, Bar No. 286798
3 elliot@kingsiegel.com
ROBERT J. KING, Bar No. 302545
4 robert@kingsiegel.com
724 S. Spring Street, Suite 201
5 Los Angeles, CA 90014
Telephone: 213.465.4802
6 Facsimile: 213.465.4803

7 Attorneys for Plaintiff
SARAH FRAZIER

8
Barbara A. Blackburn, Bar No. 253731
9 bblackburn@littler.com
Nathaniel H. Jenkins, Bar No. 312067
10 njenkins@littler.com
LITTLER MENDELSON P.C.
11 500 Capitol Mall
Suite 2000
12 Sacramento, California 95814
Telephone: 916.830.7200
13 Fax No.: 916.561.0828

14 Attorneys for Defendant
ULTA SALON, COSMETICS & FRAGRANCE, INC.

16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
19

20 SARAH FRAZIER, an individual,

21 Plaintiff,

22 v.

23 ULTA SALON, COSMETICS, &
FRAGRANCE, INC., a Delaware corporation
24 and DOES 1-10, inclusive,

25 Defendant.
26
27
28

Case No. 2:20-cv-01608-TLN-DB

**JOINT STIPULATION TO FURTHER
MODIFY THE SCHEDULING ORDER;
ORDER THEREON**

Complaint filed: 08/11/2020

Amended Complaint filed: 09/10/2020

1 Plaintiff Sarah Frazier (“Plaintiff”) and Defendant Ulta Salon, Cosmetics & Fragrance,
2 Inc. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel of record,
3 hereby agree and respectfully stipulate as follows:

4 **WHEREAS**, Plaintiff filed her Complaint on August 11, 2020, but did not serve
5 Defendant with this Complaint. Instead, Plaintiff filed a First Amended Complaint on September 10,
6 2020 (ECF No. 5), and served Defendant with the First Amended Complaint on September 15, 2020,
7 and Defendant answered on October 20, 2020;

8 **WHEREAS**, on October 29, 2020, the Parties met and conferred regarding Plaintiff’s
9 contention that Defendant’s Answer was deficient, and in turn, Defendant agreed to file an Amended
10 Answer, and did so on November 20, 2020;

11 **WHEREAS**, on August 12, 2020, this Court issued its Initial Scheduling Order, which
12 requires the Parties to complete discovery no later than 240 days after the last day that a defendant
13 may answer the complaint (which here was October 20, 2020). Accordingly, the current discovery cut
14 off is June 17, 2021 (making the deadline for either party to serve any further discovery requests May
15 18, 2021).

16 **WHEREAS**, pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), the Parties
17 exchanged initial disclosure statements and documents on December 14, 2020. Thereafter, over the
18 next five months, the Parties propounded and responded to written discovery requests, and met and
19 conferred to resolve alleged deficiencies in the discovery responses, including serving amended
20 discovery responses, as well as engaging in efforts to streamline Defendant’s search for Electronically
21 Stored Information (“ESI”) pursuant to Plaintiff’s discovery request.

22 **WHEREAS**, on May 21, 2021, this Court issued its signed Order accepting Plaintiff’s
23 and Defendant’s Joint Stipulation to Modify the Initial Scheduling Order (the “First Joint
24 Stipulation”). Pursuant to the First Joint Stipulation, the discovery cut off was extended to December
25 14, 2021.

26 **WHEREAS**, after obtaining the initial discovery extension, the Parties engaged in
27 written discovery efforts and took depositions of available witnesses, but have yet to complete
28 depositions. The Parties have attempted to set depositions, but have encountered issues locating

1 pertinent witnesses (namely, former employees of Defendant, including two of Plaintiff's former
2 managers) and have had issues with witness availability. Specifically, both Parties wish to take the
3 deposition of Tonja Springer, Plaintiff's former direct manager, and have diligently attempted to serve
4 Ms. Springer with a deposition subpoena, to which Ms. Springer appears to be actively avoiding
5 service of same. Additionally, Defendant took the first part of Plaintiff's deposition in July 2021, but
6 due to scheduling conflicts, have not been able to complete Plaintiff's deposition. Accordingly, the
7 Parties will not be able to complete these depositions and/or enforce the deposition subpoena for Ms.
8 Springer prior to the previous discovery cut off on December 14, 2021, due to witness unavailability.
9 Accordingly, on December 15, 2021, this Court issued its signed Order accepting Plaintiff's and
10 Defendant's Second Joint Stipulation to Modify the Initial Scheduling Order.

11 **WHEREAS**, Defendant attempted to serve four pertinent witnesses with deposition
12 subpoenas, all former employees of Defendant, including Plaintiff's former manager, Tonja Springer,
13 and other relevant managers, Chris Galway-Howard and Carolyn Manick, along with Plaintiff's
14 alleged harasser, Shalyce Beck, all of whom are pertinent and critical witnesses to Plaintiff's
15 allegations. Despite diligent efforts, Defendant was not able to effectuate service on any of these
16 individuals.

17 **WHEREAS**, Pursuant to a number of stipulations, culminating in the Fourth Joint
18 Stipulation, the discovery cut off was extended to June 30, 2022.

19 **WHEREAS**, the parties are actively meeting and conferring regarding several
20 remaining discovery disputes related to their respective second sets of discovery, and mutually seek
21 an extension of the discovery deadline of thirty (30) days in order to avoid unnecessary motion
22 practice.

23 **WHEREAS**, the Parties still intend to pursue early mediation of this matter in hopes
24 to reach a reasonable, global resolution of the lawsuit and to prevent any further need for further
25 written discovery, and trial preparation. However, the Parties have further agreed that in order to have
26 a productive mediation, the depositions of the individuals listed above need to be taken. As described
27 above, due to witness unavailability and/or inability to effectuate service of deposition subpoenas
28 pursuant to FRCP Rule 45, the Parties have not completed these depositions.

1 **WHEREAS**, good cause exists to modify the Court’s scheduling Order as follows:

2 The district court is given broad discretion in supervising the pretrial phase of
3 litigation...” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and
4 internal quotation marks omitted). “A schedule may be modified only for good cause and with the
5 judge’s consent.” Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d
6 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing
7 summary judgment motion after pretrial motion cut-off date).

8 To establish “good cause,” parties seeking modification of a scheduling order must
9 generally show that, even with the exercise of due diligence, they cannot meet the order’s timetable.
10 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,
11 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became
12 apparent that compliance with the scheduling order was not possible). In determining “good cause,”
13 courts also consider the importance of the requested modification, the potential prejudice in allowing
14 the modification, and, conversely, whether denial of the requested modification would result in
15 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving
16 amendment of pleadings).

17 Here, good cause exists for an extension of the discovery cut off given the Parties’
18 inability to complete necessary discovery. This matter was initially filed on August 11, 2020; however
19 Plaintiff did not immediately serve Defendant. By the time Plaintiff served Defendant with her First
20 Amended Complaint, and Defendant filed an Amended Answer and the Parties exchanged their Rule
21 26(f) disclosures, less than six months remained within the then-existing Scheduling Order’s timetable
22 to complete all necessary discovery. Even then, the Parties diligently engaged in written discovery
23 efforts, including a request that Defendant conduct a search of voluminous ESI, which took several
24 months to complete. Once the Parties obtained an extension of the initial discovery deadline, they
25 continued to engage in written discovery efforts and they took depositions of available witnesses.
26 However, the unavailability of pertinent witnesses (including Plaintiff’s former manager and alleged
27 harasser) has prevented the parties from completing discovery. The parties continue to meet and confer
28 regarding recently served discovery responses and seek an extension of the discovery deadline in order

1 to avoid unnecessary motion practice. In addition, the Parties have agreed to submit to early mediation
2 and hope to reach a global resolution of this matter, but will need additional time in order to complete
3 limited depositions prior to a mediation. If mediation is unsuccessful, the Parties will need additional
4 time to conduct further discovery and prepare for trial.

5 **THEREFORE, upon good cause shown,** the Parties stipulate to continue the
6 discovery cut off (and related deadlines) out by a minimum of 30 days (which would be July 30, 2022
7 for the discovery cutoff).

8 Dated: July 1, 2022

KING & SIEGEL, LLP

10 /s/Robert J. King (as approved on 7/1/22)

11 JULIAN BURNS KING

ELLIOT J. SIEGEL

12 ROBERT J. KING

Attorney for Plaintiff

13 SARAH FRAZIER

14 Dated: July 1, 2022

LITTLER MENDELSON P.C.

16 /s/ Nathaniel H. Jenkins

17 BARBARA A. BLACKBURN

18 NATHANIEL H. JENKINS

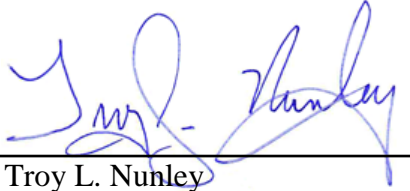
Attorneys for Defendant

19 ULTA SALON, COSMETICS & FRAGRANCE,
20 INC.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 5, 2022



Troy L. Nunley
United States District Judge